

REMARKS

Claims 10, 11, 48, 124-130, 135-139, 181-191 and 198-209 are pending. Claims 10, 11, 48, 124-130, 135-139, 181-191 and 198-209 are rejected. Applicants respectfully submit that the amendments to the claims as indicated above put the case in condition for allowance.

Amendments to the Claims

Without prejudice to the Applicants' rights to present claims of equal scope in a timely filed continuing application, to expedite prosecution and issuance of the application, the Applicants have amended Claims 48, 124-130, 186, 187, 190, 191, 199, 204, 205 and 207 to better define the invention and to make minor editorial changes. Applicants also have cancelled Claims 10, 11, 135-139, 181-183 and 200-203, and presented new claims 210-229. The amended claims and the new claims are supported by the original specification.

Support for "particles within a desired size range" (recited in amended claims 48, 124 and 199, and new claims 213 and 223) is found, for example, at page 10, lines 14-15. Support for "an inhalation dose" (recited in amended claims 190 and 207, and new claims 220 and 227) is found, for example, at page 32, line 22 & FIG. 26. Support for "about 10^9 particles/cc" (recited in new claims 210-212) is found, for example, at page 12, lines 12-14 & FIG. 23. Support for "mass median aerodynamic diameter" (recited in amended claims 86, 87, 204 and 205, and new claims 216, 217, 224 and 225) is found, for example, at page 10, lines 18-20. Support for "sufficiently stable so they will remain within that range during the time necessary to administer the aerosol to a patient" (recited in new claims 213 and 223) is found, for example, at page 10, lines 15-17.

The amendments to the claims do not introduce new matter. The Examiner is respectfully requested to enter the amendments to the claims and allow all claims.

Rejections Under 35 U.S.C. § 112, second paragraph

Claims 10, 11 and 135-139 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject

matter which the applicants regard as the invention. Office Action at 2. As indicated above, claims 10, 11 and 135-139 have been cancelled. Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

Double Patenting Rejections

Claims 10, 11, 48, 124-130, 135-139, 181-191 and 198-209 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7, 11-30 and 32-39 of copending U.S. Application No. 10/696,959 ("the '959 application").

Applicants note that the '959 application has subsequently been abandoned. Consequently, Applicants respectfully request withdrawal of the rejection on the grounds of nonstatutory obviousness-type double patenting.

Conclusion

Applicants appreciate the Examiner's careful and thorough review of the application. Applicants request the Examiner to allow the application. In the event the Examiner believes a telephonic discussion would expedite allowance or help to resolve outstanding issues regarding prosecution of the application, then the Examiner is invited to call the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to Deposit Account No. 19-5117, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to be charged to Deposit Account No. 19-5117.

Respectfully submitted,

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